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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
29250-000575/US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

Application Number
09/848,259Filed
May 4, 2001

On _____

First Named Inventor
Daniel R. JESKE

Signature _____

Art Unit
2634Examiner
Cicely Q. WARE

Typed or printed name _____

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages of attachments are provided.

I am the

applicant/inventor


Signature

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is
enclosed. (Form PTO/SB/96)

Gary D. Yacura / Reg. No. 35,416

attorney or agent of record.
Registration number. _____

Typed or printed name

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Telephone number

attorney or agent acting under 37 CFR 1.34.
Registration number: 35,416

March 27, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.



PATENT

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Daniel R. Jeske
Application No.: 09/848,259
Filed: May 04, 2001
Group: 2634
Examiner: Cicely Q. Ware
For: METHOD OF ESTIMATING A SIGNAL-TO-INTERFERENCE+NOISE
RATIO (SINR) USING DATA SAMPLES

Att'y Docket No.: 29250-000575/US

Customer Service Window
Randolph Building
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Alexandria, VA 22314
Mail Stop AF

March 27, 2006

REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Sir:

Further to the concurrent filing of the attached Notice of Appeal, the following remarks are submitted in connection with the above-identified patent application under the Pilot Program for Pre-Appeal Brief Conference (Off. Gaz. Patent & Trademark Office, Vol. 1296, No. 2, July 12, 2005).

Claims 1-5 are pending in the current application. Of those, claims 1, 3 and 5 are independent.

FIRST REJECTION FOR WHICH CONF. REQUESTED

A Pre-Appeal-Brief Conference is requested to review the rejection of claim 5 as being rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement.

Argument No. 1

The Examiner alleges that the subject matter of claim 5 is not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

First, Applicants direct the Pre-Appeal-Brief Examiners' attention to the arguments submitted on pages 6-7 of the October 5, 2005, Amendment.

The specification on page 5, lines 4-23, discloses a method of converting data symbols into quasi-pilot symbols. Specifically, on page 5, lines 11-14, the specification recites that an estimator 6 (see Fig. 2) stores received samples and make a tentative estimate on the polarity of received signals. The step of "estimating polarities of a plurality of received data symbol samples," recited in claim 5 clearly reads on and is enabled by this recitation. On page 5, lines 17-18, the specification recites that pilot symbols are replaced with the output of a multiplier 8. As shown in Figure 2, the multiplier 8 multiplies the data symbol sample by the estimated polarity; thus creating quasi-pilot symbol samples. For example, any negative data symbol sample is converted into a positive quasi-pilot symbol sample. The step of "converting the received data symbol samples into quasi-pilot symbol samples based on the estimated polarities," recited in claim 5 clearly reads on and is enabled by this recitation. Page 5, lines 15-16,

discloses that an SINR estimator 12 estimates the SINR using the output of the multiplier 8. The step of “generating an SINR estimate based on the quasi-pilot symbol samples,” recited in claim 5 clearly reads on and is enabled by this recitation. Accordingly, Applicants submit that the description on page 5, lines 4-23, enables claim 5.

Second, originally filed claim 5 recites the exact features as current pending claim 5.

In re Koller, provides that original claims constitute their own description. Accordingly, “later added claims of similar scope and wording are described thereby.” *613 F.2d 819, 204 USPQ 702 (CCPA 1980)*.

Applicants submit that the combination of the description on page 5, lines 4-23 and the originally filed claim 5, claim 5 is enabled.

SECOND REJECTION FOR WHICH CONF. REQUESTED

The Pre-Appeal-Brief Conference also is requested to review the rejection of claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Fukuhara (USP 4,627,103), hereafter, (the ‘103 patent). Applicants traversed this rejection.

Argument No. 1

First, Applicants direct the Examiners’ attention to the arguments submitted on pages 7 and 8 of the October 5, 2005, Amendment.

In response to Applicants’ remarks submitted with the amendment dated October 5, 2005, the Examiner alleges that Fukuhara “discloses that the SNR or S/N is dependent on an element Q and the polarities (M1, M2).” (Emphasis added.)

However, Q in the '103 patent does not relate to an "element," but rather means a number of samples. Column 4, line 37. In other words, the '103 patent uses Q to mean a variable number.

Accordingly, an estimation method of the '103 patent is entirely dependent on the polarity of the received data symbols because counters which are triggered by the respective polarities of the data symbols are used to determine the SNR.

Applicants submit that independent claim 1 and similarly recited independent claim 3 are patentable over the '103 patent for at the least the reasons given above.

CONCLUSION

In view of the above remarks, Applicants respectfully requests that the Pre-Appeal Brief Conference find in favor of Applicants' positions and arrange for withdrawal of the above-noted rejections, culminating in the sending of a Notice of Allowance of the pending claims.

Should there be any outstanding matters that need to be resolved in the present application, the Pre-Appeal-Brief Conference is requested to contact the undersigned at the indicated telephone number.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Very truly yours,
HARNESS, DICKEY & PIERCE, PLC

By 
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